

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2005-138481-001 DT

03/11/2014

HONORABLE PAUL J. MCMURDIE

CLERK OF THE COURT
L. Mitchell
Deputy

STATE OF ARIZONA

SUSANNE B. BLOMO

v.

RYAN WESLEY KUHS (001)

SHARMILA ROY

CAROLYN H EDLUND
CAPITAL CASE MANAGER
COURT ADMIN-CRIMINAL-PCR
VICTIM WITNESS DIV-AG-CCC

Ruling Minute Entry Regarding State's Motion to Strike References to Jurors' Mental Processes

The Court has reviewed the State's Motion to Strike References to Jurors' Mental Processes, Defendant's Response and the Reply. The Court has also reviewed the claims made by defendant in his Petition for Post-Conviction Relief, Petition Exhibits D-3, D-4, D-5 and D-6, and references in the petition to the identified exhibits.

In its Motion, the State claims that defendant's "petition and exhibits refer to inquiries into the mental processes of the jurors." Motion at 1. The State cites Lord Mansfield's Rule, that "a juror's testimony is not admissible to impeach the verdict."

Defendant claims that the protection afforded by Lord Mansfield's Rule, as recognized in *State v. Nelson*, 229 Ariz. 180, 191 (2012), does not apply as he is not challenging the verdict.¹

¹ A court may grant a new trial if a juror or jurors have committed misconduct. Rule 24.1(c)(3), Ariz.R.Crim.P. Juror affidavits are admissible to challenge a verdict, but "[n]o testimony or affidavit shall be received which inquires into the subjective motives or mental processes which led a juror to assent or dissent from the verdict." *Id.* 24.1(d). The Arizona rule Docket Code 019 Form R000A Page 1

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The Court disagrees on both counts. Lord Mansfield's Rule remains viable in Arizona; Defendant's post-conviction petition is a collateral challenge to the verdicts of guilt and death imposed in his criminal case. *See* Rule 32.1(a), Arizona Rules of Criminal Procedure.

Additionally, the Court that Rule 24.1(d) of the Arizona Rules of Criminal Procedure, which permits juror affidavits in limited circumstances to impeach the jury's verdict, including related to juror misconduct and to the jury's receipt of extraneous evidence, but emphatically states:

...No testimony or affidavit shall be received which inquires into the subjective motives or mental processes which led a juror to assent or dissent from the verdict.

See also State v. Callahan, 119 Ariz. 217 (App., 1978) (trial court's refusal to consider juror's affidavit about impact of defendant's failure to testify held proper, citing Rule 24.1); *State v. Landrum*, 25 Ariz. App. 446 (App., 1975) (juror's testimony about effect of red wig during deliberations held properly excluded; Rule 24.1 discussed); *State v. Childs*, 113 Ariz. 318, 323-24 (1976) (trial court's refusal to consider impeachment of verdict based on juror's affidavit and testimony that she was pressured into her verdict proper, when juror has agreed to verdict in open court; juror misconduct must be demonstrated to invoke Rule 24.1, Arizona Rules of Criminal Procedure).

Defendant claims that Rule 24.1 does not extend to post-conviction proceedings. The Court disagrees. Rule 24.1(d) applies to post-conviction proceedings. *See State v. Cummings*, 148 Ariz. 588, 592 (App., 1985) (Rule 24.1(d) applied in post-conviction matter).

Defendant's post-conviction petition makes no claims related to juror misconduct or receipt of extraneous information, as to which a juror affidavit may be proper. The Court's review of the individual affidavits attached as Exhibits D-3, D-4, D-5 and D-6 discloses that each of the affidavits sets forth the individual juror's subjective motives or mental processes for assenting to the verdict. Therefore,

reflects a policy long followed by courts nationwide. "The general rule, known as Lord Mansfield's rule, is that a juror's testimony is not admissible to impeach the verdict." *State v. Dickens*, 187 Ariz. 1, 15. The rule serves "to protect the process of frank and conscientious jury deliberations and the finality of jury verdicts." *State v. Poland*, 132 Ariz. 269, 282 (1982); *State v. Spears*, 184 Ariz. 277, 288, (1996) (refusing to consider juror affidavit that stated "the jury discussed defendant's failure to take the stand"). If a verdict could be impeached based on a juror's mental process at the time of deliberation, "no verdict would be safe." *Gorski v. J.C. Penney Co.*, 103 Ariz. 404, 406 (1968) (quoting *McDonald v. Pless*, 238 U.S. 264, 268 (1915)); *State v. Nelson*, 229 Ariz. 180, 190-91 (2012).

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IT IS THEREFORE ORDERED granting the State's Motion to Strike References to Jurors' Mental Processes;

IT IS FURTHER ORDERED striking the PCR petition at page 28 at lines 18-21; page 31 at lines 6 to 7; and page 33 at lines 20 to 21; striking Exhibits D-3, D-4, D-5 and D-6 in their entirety; and striking references to Exhibits D-3, D-4, D-5 and D-6 from the list of Exhibits.